

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 53-013-17-1-4-01528-17
Petitioner: Mac's Convenience Stores, LLC
Respondent: Monroe County Assessor
Parcel No.: 53-04-14-105-001.000-013
Assessment Years: 2017

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner initiated its 2017 appeal with the Monroe County Assessor on May 23, 2017. On August 15, 2017, the Monroe County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief.
2. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board and elected the Board's small claims procedures.
3. On April 30, 2018, the Board's Administrative Law Judge (ALJ) Dalene McMillen held a hearing. Neither the Board nor the ALJ inspected the property.
4. Certified Tax Representative Milo Smith appeared for the Petitioner and was sworn. Attorney Marilyn Meighen appeared for the Respondent. Appraiser Ashley Johnson-Wilcoxon (Wilcoxon), appraiser Wayne F. Johnson II (Johnson), and County Assessor Judith Sharp were sworn as witnesses for the Respondent.

Facts

5. The property under appeal is a convenience store with fuel pumps located at 4724 West State Road 46 in Bloomington.
6. The PTABOA determined the 2017 total assessment is \$1,000,000 (land \$625,000 and improvements \$375,000).
7. The Petitioner did not request a specific assessment on its Form 131. At the hearing, Mr. Smith indicated the Petitioner was only challenging the land value, and the total 2017 assessment should be \$447,000 (land \$72,000 and improvements \$375,000).

Record

8. The official record for this matter is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:

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| Petitioner Exhibit 1: | 2017 subject property record card, |
| Petitioner Exhibit 2: | 2016 subject property record card, |
| Petitioner Exhibit 3: | Petitioner's summary of the 2016 and 2017 assessments, |
| Petitioner Exhibit 4: | 2011 REAL PROPERTY ASSESSMENT MANUAL, page 9, |
| Petitioner Exhibit 5: | Mass Appraisal of Real Estate, <i>Appraisal Theory</i> , page 19, |
| Petitioner Exhibit 6: | Summary of "neighboring" parcels zoned C-3, GIS aerial map, and property record cards for: <ul style="list-style-type: none">• 4657 West Richland Plaza Drive in Ellettsville,• 4602 West Richland Plaza Drive in Bloomington,• 4610 West Richland Plaza Drive in Bloomington,• 4616 West Richland Plaza Drive in Bloomington,• 4719 West State Road 46 in Bloomington,• 4723 West State Road 46 in Bloomington,• 4724 West State Road 46 in Bloomington,• 4720 West State Road 46 in Bloomington, |
| Petitioner Exhibit 7: | Plat map and property record cards for: <ul style="list-style-type: none">• 4723 West State Road 46 in Bloomington,• 4616 West Richland Plaza Drive in Bloomington,• 4444 West State Road 46 in Bloomington,• 4602 West Richland Plaza Drive in Bloomington,• 4725 West State Road 46 in Bloomington,• 4657 West Richland Plaza Drive in Ellettsville. |
| Respondent Exhibit A: | 2017 subject property record card, |
| Respondent Exhibit B: | Appraisal report of the subject property prepared by Ashley Johnson-Wilcoxon, MAI, and Wayne F. Johnson, MAI, RM, MRICS, both from First Appraisal Group, Inc., with an effective date of January 1, 2017. |

c. The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) these findings and conclusions.

Burden of Proof

9. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
12. Here, the parties agree the total assessed value of the property increased by more than 5% from 2016 to 2017. In fact, the total assessment increased from \$522,800 in 2016 to \$1,000,000 in 2017. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the Respondent has the burden of proving the 2017 assessment is correct. To the extent the Petitioner requests an assessment below the 2016 level of \$522,800; it has the burden to prove that lower value.

Summary of the Parties' Contentions

13. Respondent's case:
 - a. In support of her position, the Respondent offered an appraisal report of the subject property prepared by Wayne F. Johnson, II, MAI, RM, MRICS, and Ashley A. Johnson-Wilcoxon, MAI. Johnson and Wilcoxon certified they prepared their appraisal report in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The purpose of the appraisal report was to establish the market value-in-use of the subject property for January 1, 2017. *Wilcoxon testimony; Resp't Ex. B.*

- b. Wilcoxon described the subject property as a commercial site, improved with a convenience store with fuel sales. The property has a Bloomington address, but “physically it is closer to Ellettsville.” The property is zoned C-3 general commercial. *Wilcoxon testimony; Resp’t Ex. A, B.*
- c. In order to develop a site value, Wilcoxon utilized the sales comparison approach by examining six vacant land sales. She used location as her primary search factor for locating comparable properties. She identified the location of the six sales as “two located near the subject property, two from the east side of Bloomington and two from the Whitehall area.” The properties ranged in size from 0.90 acre to 3.33 acres and sold between May 9, 2011, and April 17, 2017. The unadjusted sales prices ranging from \$4.31/ sq. ft. to \$9.15/ sq. ft. All six sales transferred fee simple interest and were arms-length transactions with cash-equivalent financing. *Wilcoxon testimony; Resp’t Ex. B.*
- d. Adjustments were made to account for differences in market conditions (date of sale), location, visibility, frontage, size, shape and topography. She based her size adjustment on her opinion that larger sites typically sell for less per square foot than smaller sites. Her market conditions adjustment was based on aggregated data, using both vacant land sales and improved commercial property sales from Monroe County and as reported to the DLGF. Both sources indicated an increasing average sale price from 2008 through 2017. Based on this data she determined a 2% positive annual adjustment was appropriate for market conditions. *Wilcoxon testimony; Resp’t Ex. B.*
- e. After adjustments were made, Wilcoxon calculated the average and median adjusted sale prices of \$8.57/ sq. ft. and \$8.17/ sq. ft. After weighing the sales, she determined a value of \$8.25/ sq. ft. for the subject property. Applying this figure to the site size, equates to a site value of \$580,000. *Wilcoxon testimony; Resp’t Ex. B.*
- f. In order to develop a value for the improvements, Wilcoxon first developed the cost approach to value. Using Marshall Valuation Services, she determined the replacement cost new for the convenience store and canopy. She then added entrepreneurial incentives and soft costs and subtracted depreciation based on the effective age and economic life of each component of the building. Next, she added site improvements, such as, sidewalks, asphalt paving and landscaping. She also subtracted depreciation of the site improvements based on effective age and economic life. Based on the cost approach, she determined the following values: improvement value of \$275,239; site improvement value of \$127,200; already arrived at site value of \$580,000; for a total value of \$982,439 (\$980,000 rounded). *Wilcoxon testimony; Resp’t Ex. B.*
- g. Next, Wilcoxon developed her sales comparison approach by examining sales of four convenience store/service stations, one of which was the subject property. The subject property’s 2015 sale was only utilized for comparison purposes. The comparable properties were all located in Monroe County and sold between January 16, 2012, and November 12, 2013. Adjustments were made to account for various

- differences such as condition, site area, and date of sale. The adjusted sale prices ranged from \$160.84/ sq. ft. to \$327.76/ sq. ft. Based on this approach, she calculated the market value-in-use of the subject property at \$280/ sq. ft. or \$900,000 (rounded). *Wilcoxon testimony; Resp't Ex. B.*
- h. Wilcoxon then developed an income approach for the real estate only based on market lease rates and terms from leases in “the regional area.” She used \$35.00/ sq. ft. for the 2,688 sq. ft. convenience store area and \$16.00/ sq. ft. for the 500 sq. ft. retail area. She calculated a vacancy loss of 10%. This yielded an effective gross income of \$91,872. She then adjusted the expenses by removing real estate taxes, insurance, management fees, maintenance, repairs, utilities and reserves. The net operating income was \$82,522. For the capitalization rate, she utilized the national survey Realty Rates, band of investments, and First Appraisal Group’s file data. Based on her research, she “felt a capitalization rate of 9% was reasonable.” According to this approach, the correlated value of the subject property is \$920,000. *Wilcoxon testimony; Resp't Ex. B.*
- i. Finally, Wilcoxon reconciled her cost approach, sales comparison approach and income approach. She “felt the cost approach was higher than the other two approaches to value, so she felt the correlated value should be lower than the cost approach.” Accordingly, her final reconciliation of value is \$925,000 as of January 1, 2017. The Respondent concedes this value is lower than the current assessment and requests the Board to lower the 2017 assessment to \$925,000. *Meighen argument; Wilcoxon testimony; Resp't Ex. B.*
- j. Turning to the Petitioner’s arguments, the Petitioner erroneously focused solely on the land component of the assessment rather than the total market value-in-use of the property. *Meighen argument (citing Kooshtard Property I, LLC v. Monroe Co. Ass'r; Petition No. 53-017-14-1-4-00022 (IBTR March 2, 2017)).*
- k. The Petitioner’s assessment comparison is flawed. A party is permitted to use comparable assessments to challenge or prove an assessment. But it is not enough just to say properties are comparable, they must use generally accepted appraisal and assessment practices in establishing comparability. Here, the Petitioner failed to submit any such evidence to establish his purportedly comparable properties are relevant. *Meighen argument (citing Ind. Code §6-1.1-15-18).*
- l. Finally, the Petitioner failed to present enough evidence to establish a lack of uniformity and equality. The Petitioner failed to present a proper analysis and instead claimed neighboring assessments “are not uniform.” *Meighen argument (citing Westfield Golf Practice Center v. Washington Twp. Ass'r, 859 N.E.2d 396 (Ind. Tax Ct. 2007).*

14. Petitioner's case:

- a. The subject property's land assessment is excessive. The Petitioner initiated its appeal because the land base rate increased from \$80,000 per acre in 2016 to \$625,000 per acre in 2017. The subject property is not receiving a uniform and accurate assessment when compared to the surrounding properties, as required by the manual. Despite being in the same neighborhood, other comparable properties are still being assessed with a land base rate of \$80,000 per acre. *Smith testimony; Pet'r Ex. 1, 4.*
- b. In support of its argument, Petitioner presented assessments of ten nearby comparable properties. Each of the comparable properties was zoned C-3 general commercial. One property was assessed at a land base rate of \$150,000 per acre, but was receiving a 150% negative influence factor. Six properties were assessed with a land base rate of \$80,000 per acre. The three remaining properties were assessed with a land base rate of \$80,000, but each received a negative influence factor. *Smith testimony; Pet'r Ex. 6, 7.*
- c. Because the subject property is assessed differently than the comparable properties, there is a lack of uniformity and equality. For this reason, the land should be assessed at a base rate of \$80,000 per acre, equating to a land assessment for the subject property of \$72,000. Upon adding the current improvement value of \$375,000 to the land value, the Petitioner arrives at a total requested assessment of \$447,000.¹ *Smith testimony; Pet'r Ex. 1, 6, 7.*
- d. It is also evident from two comparable sales that the land portion of the assessment is excessive. The first comparable property was a convenience store located at 4723 West State Road 46. This property sold in 2014 for \$100,000 in 2014. The second comparable property is a "retail store" and is located at 4610 West Richland Plaza Drive. This property sold for \$778,000 in 2015. This sale included "\$607,000 worth of improvements, leaving a land value of \$171,000."² *Smith testimony; Pet'r Ex. 6.*
- e. The Petitioner's appraisal is flawed. In developing her land value, Wilcoxon selected only one purportedly comparable property in the subject property's neighborhood. The remaining five purportedly comparable properties were all located in different areas of Monroe County. According to appraisal principles, "comparable properties should be selected based on their physical and locational characteristics." Here, Wilcoxon failed to select properties based on these criteria. *Smith argument; Pet'r Ex. 5.*

¹ Mr. Smith testified the total assessed value should be \$457,000, but his values of \$72,000 and \$375,000 equate to a total value of \$447,000.

² The only evidence of either sale presented by the Petitioner was a property record card for each property.

Analysis

15. The Respondent made a prima facie case the current 2017 total assessment is incorrect and provided probative evidence as to what correct total assessment should be. To the extent Petitioner sought a lower value, it failed to make a prima facie case.
- a. Indiana assesses real property based on its “true tax value,” which does not mean “fair market value,” but rather the value determined under the rules of the DLGF.³ Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2. Evidence in a tax appeal should be consistent with that standard. The cost, sales-comparison, and income approaches are three generally accepted ways to determine true tax value. 2011 MANUAL at 2. In an appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. 2011 MANUAL at 3; *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a USPAP compliant market-value-in-use appraisal is the most effective method for rebutting the presumption that an assessment is correct).
 - b. Regardless of the method used, a party must explain how its evidence relates to the relevant valuation date. *See O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.
 - c. The Respondent had the burden of proof in this case. In order to prove her case, she offered a USPAP-compliant appraisal performed by Johnson and Wilcoxon. In completing the appraisal they developed all three generally accepted valuation approaches and ultimately valued the property at \$925,000 as of January 1, 2017. In an attempt to impeach the appraisal, the Petitioner argued the purportedly comparable vacant properties selected were not based on “their physical and locational characteristics.” Here, Wilcoxon testified she selected vacant properties based on “location as her primary search factor.” She then selected lots she deemed comparable and made several adjustments to account for various differences. This is well within the expertise of a licensed appraiser. The Petitioner failed to offer any evidence of specific errors that would have led to a different value conclusion. Consequently, the Petitioner’s argument that the appraisal is flawed is unpersuasive. While the appraisal is not perfect, the Petitioner failed to impeach it or rebut it. Thus, we find the appraisal persuasive evidence of the subject property’s market value-in-use.

³ The legislature has specifically defined true tax value for various property types, including certain rental properties (Ind. Code § 6-1.1-4-39), casinos (Ind. Code § 6-1.1-4-39.5), low-income rental properties (Ind. Code § 6-1.1-4-41), and golf courses (Ind. Code § 6-1.1-4-42).

- d. Our inquiry does not end there, because the Petitioner offered its own valuation evidence. It also alleged a lack of uniformity and equality in assessments.
- e. The Petitioner claims sales of two purportedly comparable properties support its argument that the subject property's land is over assessed. In making this argument, the Petitioner is essentially relying on a sales-comparison approach to establish that the assessment should be lowered. *See* 2011 MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also, Long*, 821 N.E.2d 466, 469.
- f. To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- g. Here, the type of analysis required is lacking from the Petitioner's analysis. The only information the Petitioner provided was addresses and sales prices. The Petitioner failed to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the property under appeal. Moreover, the Petitioner failed to identify or quantify any differences between the purportedly comparable properties and the subject property. Thus, the Petitioner's sales-comparison analysis lacks probative value.
- h. The Petitioner also presented evidence of comparable properties' land assessments relying solely on a land base rate per acre. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1). The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r*, 15 N.E.2d 150 (Ind. Tax Ct. 2014). In other words, the proponent must provide the type of analysis that *Long* contemplates for the sales comparison approach. *Id.*; *see also Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value).
- i. The Petitioner's evidence lists nine purportedly comparable properties in the area that were assessed with a land base of \$80,000 per acre and one purportedly comparable property at \$150,000 per acre. Simply because a property is in the same neighboring

- area does not mean it is comparable. The lot size, topography, visibility, traffic count, location, age, size of improvements, quality of construction, conditions and amenities all play a role in the value of the property. *See, Long*, 821 N.E.2d at 470-71. The Petitioner failed to offer any meaningful testimony relating each property's specific features and characteristics to the subject property. Again, the type of analysis and related adjustments required for a probative comparison are lacking.
- j. The Petitioner also argued the assessment was not "accurate and uniform" as required by the manual. However, what the manual requires is that any mass appraisal model an assessor uses "must be capable of producing accurate and uniform values..." *See* 2011 MANUAL at 21. In this case, the Respondent is not attempting to justify its mass appraisal model or an assessment derived from it, instead she has admitted the assessment is too high and has presented an appraisal in support of a lower value.
- k. Finally, the Petitioner claimed the assessment was not uniform and equal compared to other assessments. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (citing *Southern Bell Tel. and Tel. Co. v. Markham*, 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).
- l. When a ratio study shows that a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness v. Porter Co. Ass'r*, 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs*, 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1(a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1040 (Ind. 1998).
- m. Similar to the taxpayer in *Westfield Golf*, the Petitioner's argument is flawed. Here, the Petitioner failed to explain how its purportedly comparable properties are sufficient to draw any meaningful inference about the uniformity or equality of assessments within an assessing jurisdiction. The Petitioner failed to compare the

purportedly comparable properties' assessments to objectively verifiable data, such as sales price or market value-in-use appraisals. Instead, the Petitioner wanted the Respondent to use the same methodology (apply the same base rate) to assess the subject property's land as used to assess the purportedly comparable properties. The Tax Court has rejected that type of claim. *See Westfield Golf*, 859 N.E.2d at 398-399 (rejecting taxpayer's uniformity and equality claim where taxpayer argued that its golf-ball landing area was assessed using a different base rate than the base rates used to assess landing areas at other driving ranges). The Petitioner failed to make a prima facie case showing a lack of uniformity and equality in assessments.

Conclusion

16. The Respondent had the burden of proof and established a prima facie case that the assessment should be reduced to \$925,000. However, Petitioner requested a lower value. The Petitioner failed to prove it was entitled to a further reduction in the assessment.

Final Determination

In accordance with these findings and conclusions, the 2017 assessment must be reduced to \$925,000.

ISSUED: July 30, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.